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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

April 30, 2019

Notice of Ex Parte

In re Expanding Flexible Use of the 3.7 to 4.2 GHz Band, WTB Docket No. 18-122

Dear Ms. Dortch,

Attached is an op-ed published in Morning Consult on April 30, 2019[1] regarding the Federal Communications Commission's efforts to expand flexible use of the 3.7–4.2 GHz band.[2] It supports private, secondary-market transactions as a free market way of reallocating this band to more productive uses. It further argues that an FCC auction would likely produce worse outcomes from the perspective of consumers.

* * * * *

In accordance with Section 1.1206(b) of the Commission's rules,[3] this letter is being filed with your office. If you have any questions, please contact the undersigned.

[1] Joe Kane, "Sale-ing the C Band," *Morning Consult*, April 30, 2019. https://morningconsult.com/opinions/sale-ing-the-c-band/.
[2] *Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* Notice of Proposed Rulemaking, WTB Docket No. 18-122, ¶1 (July 12, 2018). *https://goo.gl/5wCcKN*.
[3] 47 C.F.R. § 1.1206(b).

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Respectfully submitted,

/s/

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OPINION

Sale-ing the C Band

BY **JOE KANE** April 30, 2019

Washington has a peculiar way of turning the wonkiest of topics into the fiercest of debates. Such has been the case recently with wrangling over a Federal Communications Commission proceeding on the obscure topic of reallocating so-called "C band" spectrum.

Though seemingly obscure, this proceeding is worth the attention of technologists and consumers of technology — starting with anyone who has a cellphone. That is because the FCC's decision could end up freeing wireless spectrum resources that could kick-start newer and better wireless technology services — or nipping them in the bud.

The subject of the FCC proceeding is the 3.7-4.2 GHz band, sometimes known as the lower "C band," which is currently used for sending satellite TV signals from space to earth stations so that they can be retransmitted over local cable systems. But the C band is an especially large, contiguous block that falls into a "Goldilocks zone" ideal for land-based communications such as mobile internet. As consumers increasingly watch video over the internet rather than through a traditional cable subscription, that traditional use of the C band looks less attractive in comparison to terrestrial technologies like mobile data.

There is broad agreement that the C band should be repurposed — but how? The obvious answer is for the satellite companies to simply sell C band access, and they have formed a consortium to do just that. This plan is a good step toward market-based allocation of spectrum: Once private parties hold rights to radio frequencies, allowing private transactions will naturally push those frequencies to their most productive uses.

But some parties, including some in Congress, would prefer the FCC to hold a so-called "incentive auction" to reallocate the C band. Auctions are generally a good market-based approach, but they present serious difficulties due to the particularities in this band.

Think of a range of spectrum frequencies as an apartment building, with licensed users as tenants. Ordinarily, each user has a dedicated portion of the range to use, just as each tenant in a building has an apartment. But the 3.7-4.2 GHz band is governed by a "full-band, full-arc" policy in which all users may use the whole band all the time — as if the apartment building had

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no walls and tenants had access to the whole space. Even if all but one tenant in this building were to sell off their interests, the one holdout could demand a price so high that the whole deal would not be worthwhile. In the same way, for any transaction over the C band to work, all of the satellite providers would have to agree to the deal.

A private consortium-based sale solves this holdout problem by creating a single entity with authority to sell rights to the band. But during an incentive auction, the necessarily restrictive rules on coordination increase the chance that, as the payoff from being uncooperative becomes more tantalizing, holdouts cause more problems. An auction also forecloses negotiations over non-price variables, both with potential buyers and with satellite companies' current customers. Relying on the FCC to figure out the how to repack old and new users' holdings after the auction will likely produce delays and additional costs.

Furthermore, auctions under FCC rules involve a dizzying array of subsidies, "designated-entity" credits, and other legal manipulations that fundamentally undermine the free-market nature of what one traditionally understands an auction to be. In short, an FCC auction is unlikely to produce any better consumer outcome than a private sale could — and it may well produce one that is worse.

Proponents of an agency-run auction, particularly several conservative organizations in a letter to the FCC, argue that the auction would raise revenues to the benefit of "taxpayers." It is curious to see fiscal conservatives invoking "taxpayers" in support of what is essentially a massive sales tax: In the only incentive auction before this one, the government took $7 billion of the $19.8 billion in bids. And the more the government skims off the top of auction proceeds, the less incentive is left to drive spectrum to productive uses.

The economic benefits of reallocating this band will be far greater than any expected government proceeds. Rather than seeking a short-term revenue grab, then, policymakers should be focusing on productive allocation of C-band spectrum.

The ever-increasing importance of wireless devices and applications demands efficient spectrum allocation to maintain high-quality service at competitive prices. Yet both the wireless industry and the defense community have found that the United States is currently lagging in making mid-band spectrum available for commercial services. The future of the U.S. wireless ecosystem depends on getting large swaths of these frequencies into the marketplace, so it is

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essential that the FCC make smart policy in this band. Congress and the FCC should seek to facilitate, rather than block, private deals in the C band.

Joe Kane is a technology policy fellow at the R Street Institute.